

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

FLEMING COMPANIES, INC.
Employer

and

**Case No. 26-RC-8231
(formerly 30-RC-6249) ^{1/}**

**DRIVERS, SALESMEN, WAREHOUSEMEN, MILK
PROCESSORS, CANNERY, DAIRY EMPLOYEES
AND HELPERS UNION LOCAL 695, AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO ^{2/}**
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: ^{3/}

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are thereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. ^{4/}

3. The Petitioner involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: ^{5/}

Included: All full-time and regular part-time truck drivers employed by the Employer at its LaCrosse, Wisconsin facility.

Excluded: All other employees, including office clerical employees, warehouse employees, spotters, mechanics, body shop employees, dispatchers, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll

period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local 695, affiliated with the International Brotherhood of Teamsters, AFL-CIO.

LIST OF VOTERS

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U. S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days of the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Milwaukee Regional Office, 310 West Wisconsin Avenue, Suite 700, Milwaukee, WI 53203-2211 on or before **December 27, 2000**.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **January 3, 2001**.

DATED, December 20, 2000, at Memphis, Tennessee.

/S/

Ronald K. Hooks, Regional Director
National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627

1/ The General Counsel issued an Order Transferring Case from Region 30 to Region 26. Pursuant to said Order, to the extent that further proceedings are appropriate to effectuate this Decision, this case will automatically transfer back to Region 30 and will continue as Case 30-RC-6249, except that Region 26 will retain jurisdiction only with respect to pre-election issues relating to the substance of this Decision.

2/ The Petitioner's name appears as amended at the hearing.

3/ The Employer and the Petitioner filed timely briefs which have been duly considered.

4/ The parties stipulated that Fleming Companies, Inc., hereinafter referred to as the Employer, is a Wisconsin corporation with an office and place of business located in

LaCrosse, Wisconsin, where it is engaged in the wholesale distribution of grocery products. During the past 12 months, a representative period, the Employer sold and shipped goods and materials valued in excess of \$50,000 directly to customers located outside the State of Wisconsin.

5/ The Petitioner seeks to represent all full-time and regular part-time truck drivers employed at the Employer's LaCrosse facility. The Employer asserts the only appropriate unit is all full-time and regular part-time truck drivers, mechanics and spotters.

There are approximately 175 truck drivers, 17 mechanics and 10 spotters employed at the LaCrosse facility. The transportation manager is Darrell Steinle and the transportation superintendent is Scott Maas. The truck drivers, mechanics and spotters report to Maas, who reports to Steinle.

The basic duty of the truck drivers is to transport grocery goods to customers, who are located in LaCrosse, other parts of Wisconsin, Minnesota, Illinois, South Dakota and other mid-western states. Most of the runs are not local but rather over the road wherein the truck drivers are only at the Employer's facility at the beginning and end of the day or every 2 days. The requirements to be hired as a truck driver are a commercial driver's license (CDL), two years of prior driving experience and a clean driving record. A typical workday for a truck driver is as follows: check in at the guard house, pickup bills at the dispatch office, ask the spotter where their trailer and load is located in the yard, hook up the trailer to the tractor, inspect the tractor and trailer, transport the goods to various customers, unload the goods at the customers' stores, return to the warehouse, fill out post-trip paperwork, park the trailer and fill out driver

logs. The truck drivers do not load goods at the warehouse. The truck drivers usually do not move the trailers away from the dock; rather the trailer is located at the “loaded line”.

The basic duty of the mechanics to is to perform repair and maintenance work on the Employer's tractors and trailers. Their work location is in the garage, which is about two blocks from the warehouse. In order to be hired as a mechanic, one does not need to have a CDL, two years of prior driving experience or a clean driving record. At least 3 of the 17 mechanics have a CDL.

The basic duties of the spotters are to move the trailers in the yard and keep the yard clean. The spotters are not required to possess a CDL nor are they required to be able to drive a tractor. Approximately, 6 of the 10 spotters possess a CDL.

The truck drivers are paid 37.5 cents a mile plus \$16.45 an hour for down time, which includes unloading at customers' stores, and \$10 a week (25 cents an hour x 40 hours) for an insurance subsidy. There are about 5 to 6 local truck drivers that are not paid by the mile, rather they receive \$16.45 an hour. The mechanics are paid between \$16.70 and 17.50 an hour. The spotters are paid \$16.70 an hour, which includes the 25 cents an hour insurance subsidy.

The Employer's facility is open 24 hours a day. Mechanics and spotters work either the first, second or third shift. The truck drivers are not assigned to a shift; rather their work times are based upon when their runs are scheduled to leave the facility. Thus, the truck drivers' hours are varied.

The record evidence established all employees sought by the Petitioner as well as those additional employees sought by the Employer receive the same fringe benefits,

including health and life insurance, short-term disability plan, vacation and holidays. All of the employees wear the same type of uniforms.

The Employer utilizes separate seniority lists for truck drivers, mechanics and spotters and these seniority lists are utilized for job bids and vacation bids.

The daily interaction between the truck drivers and spotters is minimal. Specifically, a truck driver, when he arrives to pick up his trailer, has a short conversation with a spotter to find out where the trailer is parked. Respondent's witness, Maas, testified the average contact between a truck driver and a spotter was two minutes a day.

The daily interaction between truck drivers and mechanics is also minimal. Maas testified the average daily contact was between five and 10 minutes. Specifically, this contact occurs when a truck driver needs a repair or service to his tractor and drives it to the garage. At the garage, the truck drivers occasionally assist the mechanic by holding a wrench or a similar job function. The truck drivers do not perform any mechanical work. On occasion, the truck drivers will install a light bulb in the tractor or change the mud flaps.

Although as stated above, the job duties for the truck drivers, mechanics and spotters are distinctly different, the Employer provided testimony that mechanics and spotters occasionally perform truck driver duties and vice versa. Specifically, truck drivers occasionally drive the trailers away from the dock. Spotters occasionally refuel the tractors, a duty normally performed by truck drivers. The mechanics drive tractors out of the garage, although the spotters usually perform this duty. In the past few weeks, the Employer has not employed anyone in the wash position; thus, truck drivers,

spotters and mechanics have washed the trailers. Once a wash attendant is hired, the truck drivers, spotters and mechanics will no longer perform this duty.

Employees are not temporarily transferred from truck drivers to spotters or mechanics. On two occasions, the Employer has allowed a truck driver to work in the shop, next to the garage, doing clerical and shop work while on light duty due to an injury. But in those two instances, the employees did not perform mechanic's work. Mechanics do not drive runs to customers' stores, except on an emergency basis. This has only occurred on two occasions when mechanics, who possessed CDLs, were forced to drive because the Employer was short of drivers. The spotters do not normally drive runs to customers' stores. The Employer provided records that one spotter, Corey Fortun, a former truck driver, drove four runs this year while another spotter, Doug Rice, drove two runs this year. The Employer asserted two other spotters occasionally drove a run.

There have not been any permanent transfers between truck drivers and mechanics. On one occasion, a truck driver, Andre Lomprey, transferred to a mechanic position and thereafter transferred to a spotter position. In past five years, there have been approximately five truck drivers who have permanently transferred to spotters and 3 spotters who have permanently transferred to truck drivers. In the past three years, the Employer has hired approximately 50 truck drivers.

In determining an appropriate unit, the Board applies a community of interest analysis, wherein a number of factors are considered, including the similarity of duties, job qualifications, wages, benefits and working conditions, extent of interaction and interchange, organizational structure, functional integration of the business, history of

collective bargaining and the scope of the petitioned-for unit. **Kalamazoo Paper Box Corp.**, 136 NLRB 134 (1962).

As the above facts demonstrate, the duties and job qualifications for truck drivers, mechanics and spotters are very different. As for the wages, they are also different because the truck drivers, except for the 5 to 6 local drivers, are paid per mile plus an hourly wage for unloading their trailer while the mechanics and spotters are hourly paid. The parties stipulated there was no history of collective bargaining at the facility.

Concerning the extent of interaction and interchange, the record evidence established very little interaction between the truck drivers and mechanics and between truck drivers and spotters. Furthermore, given the number of employees in the three job classifications, the permanent transfer of approximately 10 employees over a five-year period demonstrates the lack of interchange between jobs. Also, there was a total lack of temporary transfers between truck drivers and spotters and between truck drivers and mechanics although two truck drivers, while on light duty, worked as shop employees.

The only factors, which favor the inclusion of the three job classifications, are that they receive the same benefits and are supervised by the same individuals, Maas and Steinle, for the purposes of day-to-day responsibility and labor relations.

The Board has consistently held that truck drivers comprise a functionally distinct group, which may constitute a separate appropriate unit where a union seeks to represent them separately, there is no bargaining history and no labor organization seeks to represent them in a broader unit. See **Mc-Mor-Han Trucking Co.**, 166 NLRB

700, 701 (1967), and **Flav-O-Rich, Inc.**, 234 NLRB 1011, 1017 (1978), wherein the Board did not include mechanics in a truck drivers unit. The Employer's assertion that there is a presumption in favor of mechanics being included in a truck drivers unit and citation to **Indiana Refrigerator Lines, Inc.**, 157 NLRB 539 (1966), is misplaced. Such a presumption is no longer Board law. See **Mc-Mor-Han Trucking**, *supra*. In **Gogin Trucking**, 229 NLRB 529, 538 (1977), the Board held the mechanics did not have a community of interest with the truck drivers, where the truck drivers did not perform mechanical duties and the mechanics did not regularly perform truck driving duties, the two job classifications performed their jobs at different locations, on the road versus in the garage, and the job classifications required different job qualifications. More recently, in **Overnite Transportation**, 322 NLRB 347 (1996), and **Overnite Transportation Co.**, 325 NLRB 612 (1998), the Board held the truck drivers and mechanics did not have a community of interest even though they had the same supervision and occasionally one job classification assisted the other by providing "an extra set of hands". The Employer's citation to **Carpenter Trucking**, 266 NLRB 907 (1983), is inapposite to the case at bar because the truck drivers and mechanics at Carpenter Trucking regularly performed each other's job functions.

In this case, the record evidence established the mechanics and spotters do not share a community of interest with the truck drivers because their job duties and qualifications are very different, their pay system is different and there is insufficient interaction and interchange. Furthermore, the Employer's assertion that the broader unit is appropriate because the Petitioner sought such a unit in 1997 and in the original

petition, before being amended, are without legal merit. Overall, I find the truck drivers, without the mechanics and spotters, are an appropriate unit.

There are approximately 175 employees in the unit.

CLASSIFICATION INDEX

440-1760-6280